IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7374 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

HP MASRIYA THROUGH ST WORKERS UNION

Appearance:

1. Special Civil Application No. 7374 of 2000

MR ASHISH M DAGLI for Petitioner No. 1

Mr. Biren A. Vaishnav for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Dagli for the petitioner and Mr. B.A. Vaishnav for the respondent. By way of this petition, the petitioner corporation has challenged the award made by the tribunal in Reference

NO. 244 of 1996 dated 15.10.1999 whereby the tribunal concerned has set aside the order of punishment putting the respondent in the minimum time scale for the post of conductor and has also imposed the punishment of stoppage of two annual increments withuot cumulative effect. This petition was admitted by this court on 10th July, 2000 by issuing rule thereon and interim relief against the operation of the award in question has also been granted by this court.

Learned advocate Mr. Dagli has submitted that the respondent was working as a conductor and he recovered fare from the passengers without issuing tickets. He has submitted that the past record of the respondent was bad. In past, about 33 defaults were committed by the respondent workman out of which 18 defaults are of the same nature. He has submitted that the tribunal has committed gross error in interfering with the punishment imposed by the corporation. Except these submissions, no other submissions were made by Mr. Dagli on behalf of the petitioner.

On the other hand, learned advocate Mr.Biren Vaishnav has submitted that the at the time when the bus was checked, there were in all 94 passengers over and above the passengers who were having student pass and, therefore, the respondent was not able to issue tickets to the said passengers as the bus was checked at very short distance. According to him, yet the way bill was not closed and road booking was going on and some of the passengers were found without tickets from whom fine was recovered by the checking staff. Thus, according to his submissions, as there were 94 passengers travelling in the bus at the relevant point of time, and since the road booking was going on and way bill was yet open, it cannot be presumed that there was intention of dishonesty and to misappropriate the amount of tickets since the bus was checked at very short distance. He has submitted that all these aspects were appreciated by the tribunal in their proper perspective after considering the documents on record and the tribunal has come to the conclusion that the punishment of putting him in the minimum time scale of the post of conductor is harsh and unjustified and, therefore, in exercise of the discretion vested in it, the tribunal modified the order of punishment passed by the corporation and, therefore, this court should not interfere with the award in question made by the tribunal.

I have considered the submissions made by the learned advocates for the parties. I have also perused

the award in question made by the labour court. Before examining the merits of the award in question, it would be necessary to be noted that the past record has not been produced by the corporation before the tribunal pointing out that 33 misconducts were committed by the workman concerned out of which 18 were of the similar nature as has been submitted by Mr. Dagli before this court. This can be seen from page 8, para 4 of the award in question. The tribunal has made a mention of the documents referred to and relied upon by the corporation for justifying the punishment imposed by it wherein default card has not been produced by the corporation before the tribunal. Therefore, in absence of the default card, the tribunal has not considered the past record while considering the merits of the matter and in doing so, the tribunal has not committed any error. As regards the contention raised by Mr. Dagli before this Court that the respondent has recovered fare and has not issued tickets and, thereby, has committed misconduct of dishonesty and misappropriation, the labour court has observed that in all, about 94 passengers were travelling in the bus when it was checked by the checking squad and at that point of time, way bill was found open, road booking was going on and some of the passengers were found without tickets from whom fares were collected by the workman and work of issuance of tickets was going on at that time and has also observed that these undisputed aspects or the facts were not taken into consideration by the competent authority while passing the order of punishment against the respondent and, therefore, the findings recorded by the authority without taking into consideration the aforesaid aspects cannot be considered to be legal and valid, therefore, not considered to be legal by the tribunal. The tribunal has also taken into consideration the length of service of the respondent workman and has considered that the punishment of putting him in the minimum of the time scale of the post of conductor would result into stoppage of his ten annual increments earned by him during the length of ten years' past service and, therefore, the tribunal was of the view that such punishment is harsh and unjustified and it may result into loss of lot of rupees which cannot be calculated in terms and thus, the punishment was considered to be harsh and unjustified having recurring effect not only on the pay packet of the workman concerned but even on the retirement benefits of the workman and, therefore, considering all these aspects of the matter, the tribunal has exercised the discretion vested in it and has modified the order of punishment. Upon perusal of the award in question, according to my opinion, the tribunal has rightly exercised the

discretion to modify the order of punishment and therefore, the question would be whether the discretion exercised by the tribunal is proper or not and whether the punishment imposed by the tribunal is proper or not. According to my opinion, punishment of stoppage of two increments without cumulative effect cannot be considered to be adequate punishment since it is not having recurring effect, looking to the misconduct committed by the workman. Therefore, I am of the view that the punishment of stoppage of two increments without cumulative effect is required to be modified by directing the corporation to stop three annual increments with cumulative effect, considering the misconduct which has been proved against the respondent before the tribunal. To that extent, the award in question made by the tribunal is required to be modified.

Accordingly, this petition is partly allowed. The award in question is modified in so far as it relates to punishment of stoppage of two increments without cumulative effect. Instead of punishment of stoppage of two increments without cumulative effect as has been imposed by the tribunal, petitioner corporation is directed by this order to impose punishment of stoppage of three increments with cumulative effect. Except this modification as regards punishment, rest of the directions given by the tribunal under the impugned award have not been disturbed by this Court. Rule is made absolute in terms indicated hereinabove with no order as to costs.

10.4.2002. (H.K. Rathod,J.)

Vyas